**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.11738 OF 2004**

-

**DATED: 07-02-2006**

-

Between:

M/s. Aditya Wines, Kakinada, rep. by

Bandada Subba Rao. … Petitioner

And

1. The Govt. of Andhra Pradesh, rep. by its Secretary, Revenue (Excise) Department, Hyderabad, and others. .. Respondents

**THE HON'BLE Ms. JUSTICE G. ROHINI**

**WRIT PETITION NO.11738 OF 2004**

**ORDER :**

The writ petitioner having been granted a licence in Form IL-24, was carrying on a business in retail sale of wine at Kakinada. It is stated that the petitioner paid the licence fee of Rs.7.2 lakhs for the excise year 2000-01. While so, the 3rd respondent – Prohibition & Excise Superintendent, by order dated 7-6-2000, cancelled the licence of the petitioner on the ground that the shop was located within 100 mts. distance from a temple in violation of Rule 6 of A.P. Excise (Indian & Foreign Liquor Retail Sales Conditions of Licences) Rules, 1993 (for short, 'the Rules'). The petitioner preferred an appeal before the 2nd respondent – Commissioner of Prohibition & Excise, which was disposed of by order dated 20-6-2000 allowing the petitioner to shift the shop to any place which satisfies Rule 6 of the Rules. Accordingly, the petitioner shifted IL-24 shop from D.No.45-5-21 to D.No.37-6-28, Tilak Road, Kakinada. Accordingly, the 2nd respondent by order dated 19-8-2000 restored the petitioner's licence. However, the petitioner was again directed to close the shop in the new premises on the ground that some local people were raising objections. In the circumstances, the petitioner secured a new premises bearing Door No.45-5-21/A which was stated to have been approved by all the concerned officials. However, the petitioner was not granted the necessary permission to shift the shop. In the circumstances, the petitioner filed W.P.No.1882 of 2001 and the same was allowed by this Court permitting the petitioner to shift the licensed premises from D.No.37-6-28, Tilak Nagar to D.No.45-5-21, Surya Complex Shop No.5, Jaggannaikpur, Kakinada. So far as the claim of the petitioner for refund of the licence fee for the period during which the shop could not be run was concerned, this Court observed that the petitioner was at liberty to make a representation for refund or adjustment of monthly rentals. In pursuance thereof, the petitioner made a representation dated 28-2-2001 seeking refund of the licence fee for the period from 7-6-2000 to 20-8-2000 and also from 15-9-2000 to 12-3-2001 i.e., the date on which the petitioner could shift the shop to the new premises.

Having considered the same, the Government by order dated 27-12-2002 decided to refund proportionate licence fee to the petitioner for the period from 15-9-2000 to 11-3-2001. The said decision was communicated to the petitioner by the Commissioner of Prohibition & Excise vide proceedings dated 8-1-2003.

Since the claim of the petitioner for refund of the licence fee was accepted only partly, this writ petition is filed seeking a declaration that the action of the respondents in not refunding the licence fee for the period from 7-6-2000 to 20-8-2000 is arbitrary and illegal.

In the counter-affidavit filed on behalf of the respondents, it is stated that under G.O.Ms.No.122, Revenue (Excise.III) Department, dated 2-3-2000, the Government accorded permission to the 2nd respondent – Commissioner of Prohibition & Excise to refund the proportionate licence fee for the period during which the shop was suspended or cancelled under Rule 6 of the Rules and wherein the suspension or cancellation of the licences were subsequently revoked. It is contended that in the case on hand the licence of the petitioner shop was cancelled by proceedings dated 7-6-2000 and since the said order was not set aside on appeal, but the petitioner was merely permitted to shift his shop to a different place in accordance with Rule 6 of the Rules which was subsequently complied with by the petitioners, G.O.Ms.No.122, dated 2-3-2000 does not attract to the case of the petitioner and therefore the petitioner is not entitled for the refund as claimed.

I have heard the learned Counsel for both the parties and perused the material on record.

In the case on hand, it is true that the petitioner could not carry on the business from 7-6-2000 to 20-8-2000, however, admittedly during the said period licence of the petitioner stood cancelled on the ground that the licensed premises situated within the prohibited distance as per Rule 6 of the Rules. Though the petitioner was permitted to shift the shop to a different premises, admittedly the appellate authority did not set aside the order of cancellation, but the licence was restored only after the petitioner had shifted to a different premises.

The learned Government Pleader submitted that an identical question was considered by this Court has also in SRI NARASIMHA WINES v. PROHIBITION AND EXCISE SUPERINTENDENT in which it was held that no writ of Mandamus can be issued directing the authorities to grant remission for the period during which no business was carried out.

In the circumstances, merely because the petitioner could not carry on the business during the period from 7-6-2000 to 20-8-2000, it cannot be said that the licence fee shall be refunded. Hence, the impugned order does not suffer from any infirmity and the interference by this Court is not warranted.

Accordingly, the Writ Petition is dismissed. No costs.

_____

G. ROHINI, J.

Dt. 07-02-2006.

Gbs